

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.12.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 15

TAKING NOTES

IF YOU WISH, YOU MAY TAKE NOTES TO HELP YOU REMEMBER WHAT WITNESSES SAID. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE THE CASE. DO NOT LET NOTE-TAKING DISTRACT YOU SO THAT YOU DO NOT HEAR OTHER ANSWERS BY WITNESSES. WHEN YOU LEAVE, YOUR NOTES SHOULD BE LEFT IN THE [COURTROOM] [JURY ROOM] [ENVELOPE IN THE JURY ROOM].

WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN MEMORY OF WHAT WAS SAID. NOTES ARE ONLY TO ASSIST YOUR MEMORY. YOU SHOULD NOT BE OVERLY INFLUENCED BY THE NOTES.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.10.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 16

STIPULATED FACTS

YOU SHOULD TREAT THESE FACTS AS HAVING BEEN PROVED.

1. VENUE IS PROPERLY IN THIS DISTRICT.
2. THIS COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. §§ 1331, 1337, 1343, AND 1345.
3. THE PLAINTIFF IS AUTHORIZED TO BRING THIS ACTION BY SECTION 706(F)(1) OF TITLE VII OF THE 1964 CIVIL RIGHTS ACT (TITLE VII), 42 U.S.C. §2000E-5(F)(1).
4. THIS ACTION IS AUTHORIZED AND INSTITUTED PURSUANT TO SECTION 706(F)(1) AND (3) OF TITLE VII, AND SECTION 102 OF THE CIVIL RIGHTS ACT OF 1991, 42 U.S.C. §1981A.
5. THE PLAINTIFF IS AN AFRICAN-AMERICAN MALE CITIZEN OF THE UNITED STATES.
6. THE PLAINTIFF FILED A CHARGE OF EMPLOYMENT DISCRIMINATION WITH THE EEOC AGAINST THE DEFENDANTS.
7. ALL STATUTORY CONDITIONS PRECEDENT TO THE INSTITUTION AND FILING OF THIS ACTION AS REQUIRED BY TITLE VII HAVE BEEN MET.

ADAPTED FROM MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE  
NINTH CIRCUIT, 3rd EDITION, §2.04.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 17

BENCH CONFERENCES AND RECESSES

FROM TIME TO TIME DURING THE TRIAL, IT MAY BECOME NECESSARY FOR ME TO TALK WITH THE ATTORNEYS OUT OF THE HEARING OF THE JURY, EITHER BY HAVING A CONFERENCE AT THE BENCH WHEN THE JURY IS PRESENT IN THE COURTROOM, OR BY CALLING A RECESS. PLEASE UNDERSTAND THAT WHILE YOU ARE WAITING, WE ARE WORKING. THE PURPOSE OF THESE CONFERENCES IS NOT TO KEEP RELEVANT INFORMATION FROM YOU, BUT TO DECIDE HOW CERTAIN EVIDENCE IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO AVOID CONFUSION AND ERROR.

WE WILL, OF COURSE, DO WHAT WE CAN TO KEEP THE NUMBER AND LENGTH OF THESE CONFERENCES TO A MINIMUM. I MAY NOT ALWAYS GRANT AN ATTORNEY'S REQUEST FOR A CONFERENCE. DO NOT CONSIDER MY GRANTING OR DENYING A REQUEST FOR A CONFERENCE AS ANY INDICATION OF MY OPINION OF THE CASE OR OF WHAT YOUR VERDICT SHOULD BE.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3RD EDITION, \$2.02.

GIVEN AS REQUESTED

GIVEN AS MODIFIED

REFUSED

WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

**PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 18**

**CONDUCT OF THE JURY**

I WILL NOW SAY A FEW WORDS ABOUT YOUR CONDUCT AS JURORS.

FIRST, DO NOT TALK TO EACH OTHER ABOUT THIS CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT UNTIL THE END OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT.

SECOND, DO NOT TALK WITH ANYONE ELSE ABOUT THIS CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT UNTIL THE TRIAL HAS ENDED AND YOU HAVE BEEN DISCHARGED AS JURORS. "ANYONE ELSE" INCLUDES MEMBERS OF YOUR FAMILY AND YOUR FRIENDS. YOU MAY TELL THEM THAT YOU ARE A JUROR, BUT DO NOT TELL THEM ANYTHING ABOUT THE CASE UNTIL AFTER YOU HAVE BEEN DISCHARGED BY ME.

THIRD, DO NOT LET ANYONE TALK TO YOU ABOUT THE CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT. IF SOMEONE SHOULD TRY TO TALK TO YOU, PLEASE REPORT IT TO ME IMMEDIATELY.

FOURTH, DO NOT READ ANY NEWS STORIES OR ARTICLES OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT.

FIFTH, DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES OR OTHER REFERENCE MATERIALS, AND DO NOT MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN.

SIXTH, IF YOU NEED TO COMMUNICATE WITH ME, SIMPLY GIVE A SIGNED NOTE TO THE BAILIFF TO GIVE TO ME.

SEVENTH, DO NOT MAKE UP YOUR MIND ABOUT WHAT THE VERDICT SHOULD BE UNTIL AFTER YOU HAVE GONE TO THE JURY ROOM TO DECIDE



THE CASE AND YOU AND YOUR FELLOW JURORS HAVE DISCUSSED THE  
EVIDENCE. KEEP AN OPEN MIND UNTIL THEN.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, \$1.08.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

**PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 19**

**DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

MEMBERS OF THE JURY, NOW THAT YOU HAVE HEARD ALL THE EVIDENCE AND THE ARGUMENTS OF THE ATTORNEYS, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE IN THE JURY ROOM FOR YOU TO CONSULT IF YOU FIND IT NECESSARY.

IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN THE CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE IT TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH IT OR NOT. YOU MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR SYMPATHY. THAT MEANS THAT YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE BEFORE YOU. YOU WILL RECALL THAT YOU TOOK AN OATH PROMISING TO DO SO AT THE BEGINNING OF THE CASE.

IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS; THEY ARE ALL EQUALLY IMPORTANT. YOU MUST NOT READ INTO THESE INSTRUCTIONS OR INTO ANYTHING THE COURT MAY HAVE SAID OR DONE ANY SUGGESTION AS TO WHAT VERDICT YOU SHOULD RETURN -- THAT IS A MATTER ENTIRELY UP TO YOU.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §3.01.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 20

WHAT IS EVIDENCE

THE EVIDENCE FROM WHICH YOU ARE TO DECIDE WHAT THE FACTS ARE  
CONSISTS OF:

1. THE SWORN TESTIMONY OF WITNESSES, ON BOTH DIRECT AND  
CROSS-EXAMINATION, REGARDLESS OF WHO CALLED THE  
WITNESS;
2. THE EXHIBITS WHICH HAVE BEEN RECEIVED INTO EVIDENCE;  
AND
3. ANY FACTS TO WHICH ALL THE LAWYERS HAVE AGREED OR  
STIPULATED.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, \$3.03.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

**PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 21**

**WHAT IS NOT EVIDENCE**

IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE. CERTAIN THINGS ARE NOT EVIDENCE, AND YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE. I WILL LIST THEM FOR YOU:

1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY HAVE SAID IN THEIR OPENING STATEMENTS, CLOSING ARGUMENTS, AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS.
2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE COURT'S RULING ON IT.
3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST NOT BE CONSIDERED. IN ADDITION SOME TESTIMONY AND EXHIBITS MAY HAVE BEEN RECEIVED ONLY FOR A LIMITED PURPOSE; WHERE I HAVE GIVEN A LIMITING INSTRUCTION, YOU MUST FOLLOW IT.
4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS

NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE  
CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.



AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, \$3.05.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 22

DIRECT AND CIRCUMSTANTIAL EVIDENCE

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM WHICH YOU COULD FIND ANOTHER FACT. YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY EVIDENCE.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, \$3.06.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 23

CREDIBILITY OF WITNESSES

IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.

IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE INTO ACCOUNT:

1. THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS TESTIFIED TO;
2. THE WITNESS' MEMORY;
3. THE WITNESS' MANNER WHILE TESTIFYING;
4. THE WITNESS' INTEREST IN THE OUTCOME OF THE CASE AND ANY BIAS OR PREJUDICE;
5. WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS' TESTIMONY;
6. THE REASONABLENESS OF THE WITNESS' TESTIMONY IN LIGHT OF ALL THE EVIDENCE; AND
7. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, \$3.07.

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 24

CHARTS AND SUMMARIES IN EVIDENCE

CERTAIN CHARTS AND SUMMARIES HAVE BEEN RECEIVED INTO EVIDENCE TO ILLUSTRATE INFORMATION BROUGHT OUT IN THE TRIAL. CHARTS AND SUMMARIES ARE ONLY AS GOOD AS THE UNDERLYING EVIDENCE THAT SUPPORTS THEM. YOU SHOULD, THEREFORE, GIVE THEM ONLY SUCH WEIGHT AS YOU THINK THE UNDERLYING EVIDENCE DESERVES.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, 3.11

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 25

CHARTS AND SUMMARIES NOT  
RECEIVED IN EVIDENCE

CERTAIN CHARTS AND SUMMARIES THAT HAVE NOT BEEN RECEIVED IN EVIDENCE HAVE BEEN SHOWN TO YOU IN ORDER TO HELP EXPLAIN THE CONTENTS OF BOOKS, RECORDS, DOCUMENTS, OR OTHER EVIDENCE IN THE CASE. THEY ARE NOT THEMSELVES EVIDENCE OR PROOF OF ANY FACTS. IF THEY DO NOT CORRECTLY REFLECT THE FACTS OR FIGURES SHOWN BY THE EVIDENCE IN THE CASE, YOU SHOULD DISREGARD THESE CHARTS AND SUMMARIES AND DETERMINE THE FACTS FROM THE UNDERLYING EVIDENCE.



AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, 3.10

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 26

EMPLOYMENT DISCRIMINATION - DEFINED

Title VII prohibits discrimination "because of" a protected characteristic, such as race or sex. Such discrimination is deemed "an unlawful employment practice":

(a) Employer practices It shall be an unlawful employment practice for an employer — (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

The 1991 Act added §§ 2000e-2(m), which provides that "an unlawful employment practice is established" when a protected characteristic is "a motivating factor" in an employment action:

AUTHORITY:

42 U.S.C. §§ 2000e-2(a).

COSTA v. DESERT PALACE, 299 F.3d 838 (9th Cir. 2002); Concrete Pipe & Prods. of Cal. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (citation omitted)).

GIVEN AS REQUESTED

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GIVEN AS MODIFIED

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REFUSED

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WITHDRAWN

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 27

TYPES OF EMPLOYMENT DISCRIMINATION

THERE ARE MANY TYPES OF EMPLOYMENT DISCRIMINATION IN THE  
LAW.

THE PLAINTIFF CLAIMS HIS QUALIFICATIONS FOR HIRE AS A  
FULL-TIME TEACHER WERE NOT FAIRLY JUDGED AND EVALUATED, AND THAT  
HE WAS DENIED EMPLOYMENT FOR WHICH HE WAS INDEED QUALIFIED,  
BECAUSE HE WAS AN AFRICAN-AMERICAN, AND THE ONLY REALLY AVAILABLE  
QUALIFIED CANDIDATE.

AUTHORITY:

ADAPTED FROM HARRIS v. FORKLIFT SYSTEMS, 114 S.Ct. 367, 370 (1993); FULLER v. CITY OF OAKLAND, CAL., 47 F.3d 1522, 1527, (9th Cir. 1995); STEINER v. SHOWBOAT OPERATING CO., 25 F.3d 1459 (9th Cir. 1994), cert. denied, 115 S.Ct. 733, 130 L.Ed. 636 (1995); NICHOLS v. FRANK, 42 F.3d 503 (9th Cir. 1994); ELLISON v. BRADY, 924 F.2 872, 878-79 (9th Cir. 1991); EEOC v. HACIENDA HOTEL, 881 F.2d 1504, 1514-15 (9th Cir. 1989); 29 C.F.R. §1604.11; RULE 412. 42 U.S.C. §§ 2000e-2(a). Concrete Pipe & Prods. of Cal. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (citation omitted)) COSTA v. DESERT PALACE, 299 F.3d 838 (9th Cir. 2002).

GIVEN AS REQUESTED: \_\_\_\_\_

GIVEN AS MODIFIED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

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UNITED STATES DISTRICT JUDGE

**PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 28**

**EVIDENCE OF EMPLOYMENT DISCRIMINATION**

EMPLOYMENT DISCRIMINATION INCLUDES A CONSPIRACY OR AGREEMENT TO GIVE THE BLACK APPLICANT A LOWER SCORE FOR KNOWLEDGE AND EXPERIENCE THAN OTHER APPLICANTS.

TO DETERMINE WHETHER RACIAL DISCRIMINATION OCCURRED, YOU MUST CONSIDER THE FACTS FROM THE POINT OF VIEW OF A REASONABLE AFRICAN-AMERICAN MAN. YOU MUST CONSIDER ALL THE CIRCUMSTANCES IN DETERMINING WHETHER A REASONABLE BLACK MAN WOULD HAVE FOUND THE WORK ENVIRONMENT HOSTILE, INTIMIDATING OR OFFENSIVE AND THE HIRING PROCESS FAIR IN FACT, AS WELL AS OUTWARD APPEARANCE.

FACTORS YOU MAY CONSIDER INCLUDE THE FREQUENCY OF THE DISCRIMINATORY CONDUCT, ITS SEVERITY, WHETHER IT WAS A SIGNIFICANT AND MOTIVATING FACTOR IN THE HIRING PROCESS, AND WHETHER IT UNREASONABLY INTERFERED WITH PLAINTIFF'S OPPORTUNITY FOR FAIR EMPLOYMENT. NO SINGLE FACTOR IS REQUIRED, BUT ANY OF THESE FACTORS MAY BE TAKEN INTO CONSIDERATION.

THE PLAINTIFF IS NOT REQUIRED TO PRODUCE DIRECT EVIDENCE OF RACIAL DISCRIMINATION, SUCH AS AN EYEWITNESS TO AN INCIDENT. RACIAL DISCRIMINATION OFTEN OCCURS IN PRIVATE. DISCRIMINATION, IF IT EXISTS, IS SELDOM ADMITTED, BUT IS A FACT WHICH YOU MAY INFER FROM OTHER FACTS. RACIAL DISCRIMINATION MAY OCCUR EVEN WHEN THE HARASSER DOES NOT REALIZE HIS CONDUCT HAS CREATED A HOSTILE WORKING ENVIRONMENT. AND WHEN THE ADMINISTRATOR DOES NOT REALIZE HIS KNEE JERK RESPONSE OR MANIPULATION OF THE HIRING